

IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA

**JAY B. SMILEY, Trustee of the MTP
Family Trust, a Nebraska living trust,**

Plaintiff(s),

vs.

**PATRICK JAMES SMILEY and
BARBARA SMILEY, husband and wife;
CITY OF BASSETT; and U.S.
DEPARTMENT OF AGRICULTURAL –
RURAL HOUSING SERVICE,**

Defendant(s).

Case No. CI01-26

ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

DATE OF HEARING: April 18, 2003.

DATE OF RENDITION: May 15, 2003.

DATE OF ENTRY: See court clerk's file-stamp date per § 25-1301(3).

TYPE OF HEARING: Open court.

APPEARANCES:

For plaintiff:

Boyd W. Strobe without plaintiff.

For defendants:

Smiley:

Rodney J. Palmer, initially without defendants, and
subsequently with defendant Patrick James Smiley only.

City:

Avery L. Gurnsey.

U.S.D.A.:

No appearance.

SUBJECT OF ORDER: Plaintiff's motion for partial summary judgment.

PROCEEDINGS: See journal entry rendered following hearing.

FINDINGS: The court finds and concludes that:

1. The only *evidence* submitted on the motion was a stipulation between the plaintiff and the City of Bassett, and a copy of the defendant United States' answer. The answer contains no significant admissions.

2. Although the stipulation provides support for partial granting of the motion as against the city, it provides no evidentiary support for relief against any other defendant. Because the stipulation applies only to the city and would presumably be admissible at trial for that limited purpose in any event, it serves no useful purpose to grant summary judgment relief against the city where no other summary judgment relief could properly be granted.

3. The party moving for summary judgment has the burden of showing that no genuine issue as to any material fact exists. *Hogan v. Garden County*, 264 Neb. 115, 646 N.W.2d 257 (2002). That party must therefore produce enough *evidence* to demonstrate such party's entitlement to a judgment if the evidence remains uncontroverted. *Id.*

4. The plaintiff produced *no evidence* against the defendants Smiley or the United States. The stipulation between the plaintiff and the city does not constitute *evidence* against the other defendants. Consequently, there is no evidence to support granting summary judgment against the other defendants.

5. Because even partial summary judgment cannot be granted against the defendants Smiley and the United States, no effective relief can be granted on the motion and the motion should be denied.

ORDER: IT IS THEREFORE ORDERED that:

1. The plaintiff's motion for partial summary judgment is denied.
2. Separate order for telephone progression conference is made contemporaneously with this order.

Signed in chambers at Ainsworth, Nebraska, on **May 15, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.
If checked, the court clerk shall:

☒ Note the decision on the trial docket as: [date of filing] **Signed "Order Denying Motion for Partial Summary Judgment" entered.**

Done on _____, 20____ by _____.

☒ Mail a copy of this order to all counsel of record and any pro se parties.

Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge